

Honorable Marsha J. Pechman

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

DEREK TUCSON, ROBIN SNYDER,
MONSIEREE DE CASTRO, and ERIK
MOYA-DELGADO,

Plaintiffs,

v.

CITY OF SEATTLE, ALEXANDER
PATTON, DYLAN NELSON, RYAN
KENNARD, and MICHELE LETIZIA,

Defendants.

No. 2:23-cv-00017-MJP

AGREED PRETRIAL ORDER

JURISDICTION

This Court has Jurisdiction pursuant to 28 U.S.C. § 1331.

CLAIMS AND DEFENSES

Plaintiffs will pursue at trial the following claims:

1. Violation of the First Amendment – Retaliatory Arrest – Defendants Letizia, Patton, and Nelson.

Derek Tucson against Michele Letizia and Alexander Patton.
Robin Snyder against Michele Letizia and Dylan Nelson.
Monsieree DeCastro against Michele Letizia and Dylan Nelson.
Erik Moya-Delgado against Michele Letizia.

- 1 2. Violation of the First Amendment – Retaliatory Booking – Defendants Kennard,
2 Patton, and Nelson.

3 Derek Tucson against Ryan Kennard, Dylan Nelson, and Alexander
4 Patton.

5 Robin Snyder against Ryan Kennard, and Alexander Patton.

6 Monsieree DeCastro against Ryan Kennard and Alexander Patton.

7 Erik Moya-Delgado against Ryan Kennard, Dylan Nelson, and Alexander
8 Patton.

- 9 3. Violation of the First Amendment – *Monell* Claims against City of Seattle for
10 Retaliatory Booking.

- 11 4. Violation of the First Amendment – As Applied Challenge (injunctive relief).

12 **ADMITTED FACTS**

13 1. Seattle Police Department (SPD) officers arrested all four Plaintiffs for chalk or
14 charcoal writing on a wall January 1, 2021.

15 2. Seattle Police Department (SPD) officers transported all four Plaintiffs to King
16 County Jail for booking.

17 **ISSUES OF LAW—PLAINTIFF**

18 1. Whether SMC 12A.08.020.A.2 violates the First Amendment as applied to
19 Plaintiffs’ chalk writing in the public forum.

20 2. Whether SMC 12A.08.020.A.2 violates the Fourteenth Amendment as applied to
21 Plaintiffs’ chalk writing in the public forum.

22 3. Whether Defendants’ enforcement of SMC 12A.08.020.A.2 against political
23 chalking in the public should be enjoined.

24 4. Motions in limine – the Court will be called on to resolve disputed motions in
25 limine.
26
27

1. Whether plaintiffs present sufficient evidence to support a jury verdict on their claims.
2. Whether defendants present sufficient evidence to support a jury verdict on their affirmative defenses.
3. Evidentiary issues presented by the parties, including motions in limine.
4. The jury instructions, verdict form, and special interrogatories.

The names and addresses of witnesses, other than experts, to be used at the time of trial and the general nature of the testimony of each are:

- **Derek Tucson.** Contact c/o Plaintiffs' counsel. Mr. Tucson will testify regarding the circumstances of his arrest and booking into jail by SPD on January 1, 2021; the damages suffered therefrom, including emotional harm; other incidents of actual and planned chalking and political speech; the chilling effect on his speech as a result of his arrest and the City's related policies and practices; the emotional harm and damages suffered as a result of the arrest and booking; and the authentication of various documents.

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1 policies and practices; the emotional harm and damages suffered as a result of the arrest and
2 booking; and the authentication of various documents.

3 • **Monsieree De Castro.** Contact c/o Plaintiffs' counsel. Ms. De Castro will testify
4 regarding the circumstances of her arrest and booking into jail by SPD on January 1, 2021; the
5 damages suffered therefrom, including emotional harm; other incidents of actual and planned
6 chalking and political speech; the chilling effect on her speech as a result of his arrest and the
7 City's related policies and practices; the emotional harm and damages suffered as a result of the
8 arrest and booking; and the authentication of various documents.

9
10 • **Erik Moya-Delgado.** Contact c/o Plaintiffs' counsel. Mr. Moya-Delgado will
11 testify regarding the circumstances of his arrest and booking into jail by SPD on January 1, 2021;
12 the damages suffered therefrom, including emotional harm; other incidents of actual and planned
13 chalking and political speech; the chilling effect on his speech as a result of his arrest and the
14 City's related policies and practices; the emotional harm and damages suffered as a result of the
15 arrest and booking; and the authentication of various documents.

16
17 • **Caedmon Cahill.** Contact c/o Defendants' counsel. Ms. Cahill will testify
18 regarding her role as a Policy Advisor for the City of Seattle during 2020 and 2021; COVID-19
19 booking restrictions; her investigation into the City bookings of protestors in violation of the
20 COVID-19 booking restrictions; her efforts to bring these violations to the attention of SPD and
21 the City of Seattle Mayor's Office; the nature of the response she received from SPD and the
22 Mayor's office; and the City's policies and practices with regard to booking into King County
23 Jail during 2020 and 2021.

24
25 • **Michele Letizia.** Contact c/o Defendants' counsel. Officer Letizia is expected to
26 testify about the facts and circumstances of the arrests of Plaintiffs; his observations of Plaintiffs
27

1 through a security camera prior to and during the arrests; his communications with other officers
2 regarding the same; the reason for the arrests; and the culture within the East Precinct as of
3 January 2021; and the City's policy and practice with respect to chalk writing; the exercise of his
4 discretion in making arrest and booking decisions.

5
6 • **Jamison Maehler.** Contact c/o Defendants' counsel. Officer Maehler is expected
7 to testify about the facts and circumstances of the arrests of Plaintiffs; the reason for the arrests
8 and booking of Plaintiffs; the culture within the East Precinct as of January 2021; the East
9 Precinct break room or bike room; the presence of certain political materials within that room;
10 the presence of Chief of Police Carmen Best within that room; and the City's policy and practice
11 with respect to chalk writing; the exercise of his discretion in making arrest and booking
12 decisions.

13
14 • **Ryan Kennard.** Contact c/o Defendants' counsel. Sgt. Kennard is expected to
15 testify about the facts and circumstances of the arrests of Plaintiffs; the reason for the arrests and
16 booking of Plaintiffs; the booking policies and practices at SPD as of January 2021; the culture
17 within the East Precinct as of January 2021; and the City's policy and practice with respect to
18 chalk writing; the exercise of his discretion in making arrest and booking decisions.

19
20 • **Dylan Nelson.** Contact c/o Defendants' counsel. Officer Nelson is expected to
21 testify about the facts and circumstances of the arrests of Plaintiffs; the reason for the arrests and
22 booking of Plaintiffs; the culture within the East Precinct as of January 2021; the booking and
23 arrest policies in place at SPD and the East Precinct as of January 2021; and the City's policy
24 and practice with respect to chalk writing; the exercise of his discretion in making arrest and
25 booking decisions.

1 • **Alexander Patton.** Contact c/o Defendants' counsel. Officer Patton may testify
2 about the facts and circumstances of the arrests of Plaintiffs; the reason for the arrests and
3 booking of Plaintiffs; the culture within the East Precinct as of January 2021; the booking and
4 arrest policies in place at SPD and the East Precinct as of January 2021; and the City's policy
5 and practice with respect to chalk writing; the exercise of his discretion in making arrest and
6 booking decisions.

8 • **Daniel Clark.** 206-466-8396. Mr. Clark is expected to testify about the
9 authentication of certain exhibits relating to incidents of arrest or threatened arrest for political
10 chalking.

11 • **Ryan Barrett.** Contact c/o Defendants' counsel. Officer Barrett may testify about
12 the facts and circumstances of the arrests of Plaintiffs; the reason for the arrests and booking of
13 Plaintiffs; the culture within the East Precinct as of January 2021; the booking and arrest policies
14 in place at SPD and the East Precinct as of January 2021; access to the precinct's bike/break
15 room containing improper political materials; the City's policy and practice with respect to chalk
16 writing; the exercise of his discretion in making arrest and booking decisions.

18 **Defendants' Witnesses – Will Testify:**

19 Captain Jung Trinh.
20 c/o Kerala Cowart, Assistant City Attorney
21 Seattle City Attorney's Office
22 701 Fifth Avenue, Suite 2050
23 Seattle, WA 98104-7095

24 In addition to the witnesses identified by Plaintiffs, the Defendants will call Captain
25 Jung Trinh. Contact c/o Defendants' counsel. Captain Trinh will corroborate the officer defendants'
26 testimony about their reasons for addressing property crime around the East Precinct. As watch
27 commander at the time, he has a big picture perspective on how precinct operations such as 911
response were regularly disrupted that fall and winter by people committing misdemeanor crimes.

These misdemeanors included intentionally blocking officers' vehicles, throwing bags of garbage, and breaking the sally port card reader. In addition, Captain Trinh will testify about booking practices as related to Plaintiffs' Monell claims.

Ofc. Mia Nguyen
c/o Kerala Cowart, Assistant City Attorney
Seattle City Attorney's Office
701 Fifth Avenue, Suite 2050
Seattle, WA 98104-7095

Defendants will call Ofc. Nguyen. She was the arresting officer for Plaintiff Moya-Delgado and she will testify as to her observations of the facts and circumstances of his arrest. In addition, she participated when Plaintiffs Snyder and DeCastro were processed in the holding cell and transported to King County jail and she will testify as to her observations of those events.

Defendants received Plaintiffs' narrowed list of deposition designations on June 3. Plaintiffs intend to present deposition testimony in lieu of live testimony for three witnesses who plaintiffs do not also plan to call as live witnesses. Defendants are evaluating whether or not they will call any of these witnesses to respond to the designated deposition excerpts and will notify Plaintiffs and the Court as soon as possible of their decision.

PLAINTIFFS' TRIAL EXHIBITS

Plaintiffs identify the following trial exhibits, which they intend to present to the jury in electronic format:

Ex. #	Description	Authenticity	Admissibility	Objection	Admitted
INCIDENT PHOTOS AND STILLs					
1	Photos of chalk writing (PL-000057, CITY_000417, CITY_000421, CITY_000422, CITY_000423, CITY_000424)			None	

Ex. #	Description	Authenticity	Admissibility	Objection	Admitted
2	Screen shot of Trump Flag in East Precinct (still from Dkt. 81-5, CITY_000912)			MIL, 401, 402, 403	
3	Screen shot of tombstone in East Precinct (Dkt. 81-6, CITY_000912)			MIL, 401, 402, 403	
4	Still showing police presence (from PL_000164)			None	
5	Still showing police presence, (from CITY_000879)			None	
ARREST AND BOOKING DOCUMENTATION					
6	Arrest reports (CITY_000461- 463, 496-498, 491--493, 465-467)			None	
7	Booking receipts (CITY_000473, 476, 479, 488)			None	
8	Kennard screening report and screening forms (CITY_000457, CITY_000499-506)			None	
9	Barrett property inventory (CITY_000459)			None	
10	Nelson statement (CITY_000474-475)			None	
11	Nelson inventory of livestream video (CITY_000477-478)			None	
12	Patton statement (CITY_000480-481)			None	
13	Letizia statement (CITY_000494)			None	
14	Booking verifications (CITY_000507, 508, 509, 510, 511)	Stipulate to admit exhibit with		REDACT PII; NONE	

Ex. #	Description	Authenticity	Admissibility	Objection	Admitted
		summary narrative description, to avoid need to offer witness to authenticate?			
15	Incident report and cover sheet (CITY_000489-490, 482-485)			None	
16	CAD Report, CITY_000518-527			REDACT PII; NONE	
INCIDENT VIDEOS					
17	Security camera video, OutsideEntranceView, CITY_000878			None	
18	Security camera video OutsideAlley pt. 1 (Dkt. 81-2, CITY_000879)			None	
19	Security camera video OutsideAlley pt. 2 (Dkt. 81-2, CITY_000880)			None	
20	Officer Jordon Body Worn Camera video (Dkt. 81-16, CITY_000922, Axon Body 3 Video 2021-01-01 2233)			401, 402, 802 (unless specific clips identified)	
21	Officer Patton Body Worn Camera video (Dkt. 96-4, CITY_000921, Axon Body 3 Video 2021-01-01 2233)			MIL, 403 until 00:20. Otherwise None	
22	Officer Gregory Body Worn Camera (Axon Body 3 Video 2021-			401, 402, 802 (unless specific	

Ex. #	Description	Authenticity	Admissibility	Objection	Admitted
	01-01 2233, CITY_000920) (arrest of DT, with shove)			clips identified)	
23	Officer Barrett Body Worn Camera (produced by defense 5/21/24) (Axon_Body_3_Video_2021-01-01_2235)			None	
24	Officer Nguyen Body Worn Camera, CITY_000916, Axon Body 3 Video 2021-01-01 2237			401, 402, 802 (unless specific clips identified)	
25	Officer Nelson Body Worn Camera video (Dkt. 81-17, CITY_000914, Axon Body 3 Video 2021-01-01 2237)			None	
26	Maehler Body Worn Camera video (Dkt. 81-5, CITY_000912, Axon Body 3 Video 2021-01-01 2249)			MIL 401, 402, 802 (unless specific clips identified)	
27	Officer Gregory Body Worn Camera, (CITY_000909, Axon Body 3 Video 2021-01-01 2249), shove of Moya Delgado			MIL, 401, 402, 403 802	
28	Officer Barrett Body Worn Camera video (Dkt. 96-2, CITY_000910, Axon Body 3 Video 2021-01-01 2249)			401, 402, 802 (unless specific clips identified)	
29	Officer Nelson Body Worn Camera video (Dkt. 96-3, CITY_000911, Axon Body 3 Video 2021-01-01 2249)			None	
30	Officer Barrett Body Worn Camera video (Dkt. 96-1, CITY_000904,			401, 402, 802 (unless	

Ex. #	Description	Authenticity	Admissibility	Objection	Admitted
	Axon_Body_3_Video_2021-01-01_2255-3)			specific clips identified)	
31	Officer Gregory Body Worn Camera, CITY_000901, Axon Body 3 Video 2021-01-01 2259			401, 402, 802 (unless specific clips identified)	
32	Officer Barrett Body Worn Camera video, (CITY_000899, Axon Body 3 Video 2021-01-01 2301)			None	
33	Officer Gregory Body Worn Camera video (Dkt. 96-6, CITY_000891, Axon Body 3 Video 2021-01-01 2330)			None	
34	ICV -- Snyder and De Castro -- CITY_000889, AXON Fleet 2 IR Video 2021-01-01 2333			None	
35	ICV – Tucson and Moya Delgado – CITY_000882, 2021-736_ICV_8596@20210101233325.mpg			Duplicates Ex 34	
36	Livestream video, Dkt. 96-5, PL_000164			No Objection to 0:00-4:45, 15:17-16:40, or 22:03-23:00 401, 402, 403, 802 to remainder of Exhibit	
BOOKING POLICY DOCUMENTS					
37	Diaz booking memo, (Dkt. 96-7, CITY_000768-769)			None	

Ex. #	Description	Authenticity	Admissibility	Objection	Admitted
38	SPD email re: booking, Mar. 24, 2020, CITY_000770			None	
39	May 20, 2020 email "remove booking restrictions," CITY_012315			403, 802, 805	
40	June 5, 2020 Bushaw email, Dkt. 98-8, PL-000524	Object		401, 402, 403, 602, 802	
41	June 2020 Notes re: booking restrictions, CITY_005163			401, 402, 802	
42	July 6, 2020 email re: bookings, CITY_004513-4517			401, 402, 403, 602, 802	
43	Oct. 6, 2020 email from Cahill, CITY_004464-66			401, 402, 403, 802	
44	Oct. 8, 2020 Caedmon Cahill email (Dkt. 96-11, CITY_004435-4436)			401, 402, 403, 802	
45	October 22 nd , 2020 Cahill emails. CITY_004484-4487			401, 402, 403, 802	
46	Nov. 16, 2020 JAG organizing email, CITY_002294-2296			401, 402, 802	
47	Dec. 2 2020 JAG meeting invite, CITY_010329-330			401, 402	
48	Dec. 16 2020 JAG meeting invite, CITY_010744-45			401, 402	
49	Dec. 16 2020 JAG agenda re: booking restrictions, CITY_012198			401, 402	
50	Dec. 21, 2020 email to Kline re: booking restrictions, CITY_012266-7			401, 402, 802	

Ex. #	Description	Authenticity	Admissibility	Objection	Admitted
51	Jan. 6, 2021 email re: booking restrictions, CITY_012333-34			401, 402, 403, 602, 802	
52	Jan 6, 2021 email to Julie Kline re booking restrictions, CITY_012282-83			401, 402, 403, 602, 802	
53	Jan. 6, 2021 JAG emails and agenda, CITY_009500-503			401, 402, 403, 602, 802	
54	Jan. 13, 2021 Caedmon Cahill email (Dkt. 96-12, CITY_012237-39)			401, 402, 403, 802	
55	Jan. 20, 2021, Emails with Assistant Chief Mahaffey, CITY_012302-05			401, 402, 403, 802 (scheduling parts ok)	
56	Email re: Keith Swank working group participation, CITY_011995-96			401, 402, 403, 802	
57	Julie Kline JAG text messages re May 2021 JAG meeting, CITY_004610 <i>et seq.</i>			401, 402, 403, 802	
58	Meeting invite for May 2021 JAG meeting CITY-010435-36			401, 402	
59	SPD Manual, Section 6.010 (Dkt. 96-31)			401, 402 (not in effect on Jan 2021)	
60	Protest Bookings Spreadsheet, CITY_005092			401, 402, 403, 602	
61	KOMO Diaz clip, Dep. Exhibit 10	Object		401, 402, 403, 802, 901	

Ex. #	Description	Authenticity	Admissibility	Objection	Admitted
62	Evidence Item Scan (Override article) CITY_000403	Object		401, 402, 403, 802, 901	
CHALKING POLICY AND PRACTICE					
63	Chalking photo, PL-000001	Object			
64	Chalking photo, PL-000002	Object			
65	Daniel Clark video of officer chalking, Dkt. 79-1, PL-000581.	Object		None	
66	Screenshot from Clark video, from PL-000581	Object		None	
67	City of Seattle webpage regarding chalk Dkt. 96-10			None	
68	SPD Twitter post regarding chalk, PL-00008			None	
69	Tire chalking video (March), Dkt. 108-1, PL-000815			401, 402, 403	
70	Second video of tire chalking (April), PL-000816			401, 402, 403	
71	Photo of tire chalking, PL-000817			401, 402, 403	
72	Tire chalking photo, PL-000519			401, 402, 403	
73	Tire chalking photo, PL-000007.			401, 402, 403	
74	Video of Lt. Brooks chalking arrest warning, Dkt. 38-1, PL-000165	Object		403	

Ex. #	Description	Authenticity	Admissibility	Objection	Admitted
75	KOMO video of chalking, PL-000046.	object		401, 402, 403, 602, 901	
76	Patton body camera of Clark arrest, CITY_000943			401, 402, 403	
MISCELLANEOUS					
77	RCW 42.52.180 – Use of public resources			MIL, 401, 402, 403	
78	SMC 4.16.070 – Code of Ethics			MIL, 401, 402, 403	
79	SPD Policy 5.060 – Employee Political Activity			MIL, 401, 402, 403	
80	OPA Case Summary, No. 2021OPA-0013, Dkt. 96-33			MIL, 401, 402, 403, 802	
81	Trump Twitter post, Dkt. 96-32	object		MIL, 401, 402, 403, 802, 901	
82	Video of barricade construction (viewed and discussed in Jackson 30(b)(6) Dep.)	object		MIL, 401, 402, 901	
83	Spreadsheet with DOT closure permits, PL-000134	object		401, 402, 403, 602, 802,	
84	Barricade complaints, PL-000136, 137, 135	object		401, 402, 403, 602, 802, 901	
85	Officer Gregory OPA Interview, CITY_004703 - CITY_004720			802	

Ex. #	Description	Authenticity	Admissibility	Objection	Admitted
86	Officer Barrett OPA Interview, CITY_004721 - CITY_004740			802	
87	Officer Nelson OPA Interview, CITY_004640 - CITY_004662			401, 402, 403, unless Plfs identify excerpts	
88	Officer Letizia OPA Interview, CITY_004683 - CITY_004702			401, 402, 403, unless Plfs identify excerpts	
89	Officer Nguyen OPA Interview, CITY_004663 - CITY_004682			802	
90	Body Worn Camera showing full length of barricade wall, Axon Body 3 Video 2020-12-16 0250, CITY_000930			401, 402, 403	
91	SPD BWC Policy			401, 402; version not in effect on Jan 1, 2021	
92	Patton Body Worn Camera showing Gadsden Flag, Axon Body 3 Video 2020-12-16 0239, CITY_000943			MIL; 401, 402, 403	
93	Gadsden flag "SPD Has Tread on Me" screenshot excerpted from CITY_000943			MIL; 401, 402, 403	
94	Copy of SMC 12A.08.020			MIL	
DAMAGES					
95	Plaintiff De Castro progress notes, PL-000646-684	object		MIL, FRCP 26(a)(1)(A), 701, 901	

Ex. #	Description	Authenticity	Admissibility	Objection	Admitted
96	Plaintiff De Castro invoices, PL-000642-645				
97	Plaintiff De Castro, Questionnaire/Intake notes, PL-000685-694	object		MIL, FRCP 26(a)(1), 701, 901	
98	Plaintiff De Castro, opinion letter, PL-000725	object		401, 402, 701, 702, 703, 704, 705, 901, MIL; FRCP 26(a)(2)(B)	
99	Plaintiff De Castro, Clinician Administered PTSD Scale, PL-000695-000724	object		401, 402, 701, 702, 703, 704, 705, 901, MIL; FRCP 26(a)(2)(B)	
100	De Castro Wage Docs, PL-000730- 808	object		401, 402, 901, compound exhibit	
SUPPLEMENTAL EXHIBITS					
101	Maehler Body Worn Camera video, CITY_012364			401, 402, 403 (cumulative)	
102	Complete arrest documentation, CITY_000453-517			401, 402, 802 (document is too long, many irrelevant w/ hearsay, but many parts	

Ex. #	Description	Authenticity	Admissibility	Objection	Admitted
				are admissible)	

DEFENDANTS' TRIAL EXHIBITS

In addition to those identified by Plaintiffs, the Defendants identify the following trial exhibits, which Defendants intend to present to the jury in electronic format:

Ex. #	Description	Authenticity	Admissibility	Objection	Admitted
200	Body Worn Video of Mia Nguyen, 11:07 pm; Dkt 94, CITY_000898. Excerpts 11:09-11:10, 11:13-15		Agreed		
201	SPD General Offense Report #2021-000736; Dkt 86-16, CITY_000453.		Withdrawn	FRE 401, 402, 403, 801, 802. Plaintiffs have included the relevant and admissible excerpts of this packet of documents in their proposed exhibits.	
202	Captain Sano Email, dated Aug. 10, 2021; Dkt 103-3, CITY_004742.		Withdrawn	FRE 401, 402, 403, 407, 801	
203	Photos, SPD East Precinct, Dkt 111-1, CITY_000419-		Agreed		

Ex. #	Description	Authenticity	Admissibility	Objection	Admitted
	CITY_000420, CITY_000422-CITY_000427, and PL-000070.				
204	Video of Plaintiff Moya-Delgado marking wall of East Precinct building; PL-000162		Agreed		
205	Excerpt of In-Car Video, Plaintiffs Snyder and DeCastro; CITY_000898. Excerpt 11:34-11:39.		Disputed	Document Defendant s produced as exhibit is Bates 899. Object under FRE 401, 403.	
206	Body Worn Video of Mia Nguyen, 10:55 pm; Dkt 94, CITY_000903 (excerpt – 10:55-10:58pm)		Agreed		

ORDER OF THE COURT

This case is scheduled for trial before a jury on June 12, 2024, at 9:00 a.m. This order has been approved by the parties as evidenced by the signatures of their counsel. This order shall control the subsequent course of the action unless modified by a subsequent order. This order shall not be further amended except by order of the court pursuant to agreement of the parties or to prevent manifest injustice.

Dated June 4, 2024.



Marsha J. Pechman
United States Senior District Judge

As Presented on 28th day of May, 2024 by:

By: MacDONALD HOAGUE & BAYLESS

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